

Risk Management & Tort Defense Division

Statute §2-9-301, MCA

Part 3

Claims and Actions

2-9-301. Filing of claims against state and political subdivisions -- disposition by state agency as prerequisite. (1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter must be presented in writing to the department of administration.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has finally denied the claim. The department must grant or deny the claim in writing within 120 days after the claim is presented to the department. The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 120 days. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20, by third-party complaint, cross-claim, or counterclaim.

(3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision.

History: (1)En. Sec. 11, Ch. 380, L. 1973; amd. Sec. 1, Ch. 361, L. 1975; amd. Sec. 5, Ch. 360, L. 1977; Sec. 82-4311, R.C.M. 1947; (2)En. Sec. 12, Ch. 380, L. 1973; amd. Sec. 6, Ch. 360, L. 1977; Sec. 82-4312, R.C.M. 1947; R.C.M. 1947, 82-4311, 82-4312; amd. Sec. 1, Ch. 507, L. 1987; amd. Sec. 1, Ch. 494, L. 1991.

2-9-302. Time for filing -- limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

History: En. 82-4312.1 by Sec. 7, Ch. 360, L. 1977; R.C.M. 1947, 82-4312.1.

2-9-303. Compromise or settlement of claim against state. (1) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge must approve the compromise settlement.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection.

History: En. Sec. 19, Ch. 380, L. 1973; amd. Sec. 9, Ch. 360, L. 1977; R.C.M. 1947, 82-4319; amd. Sec. 1, Ch. 63, L. 1981; amd. Sec. 1, Ch. 97, L. 1987; amd. Sec. 1, Ch. 111, L. 1987.

2-9-304. Compromise or settlement of claim against political subdivision. (1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into pursuant to subsection (1) are public records available for public inspection.

History: En. Sec. 18, Ch. 380, L. 1973; amd. Sec. 8, Ch. 360, L. 1977; R.C.M. 1947, 82-4318; amd. Sec. 2, Ch. 111, L. 1987; amd. Sec. 1, Ch. 103, L. 1995.

2-9-305. Immunization, defense, and indemnification of employees. (1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.

(2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.

(3) Upon receiving service of a summons and complaint in a noncriminal action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee having no supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

(4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of subsection (6).

(6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;

(b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the government entity employer; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If no judicial determination has been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the employer had no obligation to defend the employee. The governmental entity employer has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.